

MONTGOMERY COUNTY, STATE OF MARYLAND

**SWEEPSTAKES HOMEOWNERS
ASSOCIATION,**

Complainant,

v.

**KERMIT WEBB
WANDA WEBB,**

Respondents.

: COMMISSION ON COMMON
: OWNERSHIP COMMUNITIES

:

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: Case No. 55-10

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: Hearing date: February 10, 2011

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: Decision Issued: April 26, 2011

: (Panel: Burgess, Dubin, and Farrar)

Memorandum Decision and Order By: Ursula Koenig Burgess

MEMORANDUM DECISION AND ORDER

The above-captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland (“Commission”) for a hearing pursuant to Chapter 10B of the Montgomery County Code 2004, as amended. The duly appointed Hearing Panel considered the testimony, evidence and arguments presented and does hereby find, determine and order as follows:

BACKGROUND

On or about June 15, 2010, the Complainant, Sweepstakes Homeowners Association (“Sweepstakes” or “Association”) filed this Complaint with the Commission alleging that the Respondents, Kermit and Wanda Webb (collectively, the “Webbs”) were parking trailers on their property in violation of the Association’s governing documents. (Record (“R.”) at 9). On July 8, 2010, the Webbs responded to the Complaint by letter to the Commission. (R. at 124). In that letter, the Webbs stated that they have been parking

trailers on their property for approximately 21 years and that no one had ever “confronted” them about the appearance of their property previously. (R. at 124). In addition, the builder poured the pad next to the house “to spark [sic] a boat and trailers.” (R. at 124). Accordingly, they asked that they be “grandfathered in” and be authorized to park a trailer on the pad for so long as they lived at the property. (R. at 124). The parties participated in mediation, but were unable to reach a resolution. (R. at 126).

At the hearing, the parties presented exhibits, witnesses and testimony to support their respective positions.

FINDINGS OF FACT

1. Sweepstakes is an incorporated Maryland homeowners association within the meaning of the Maryland Homeowners Association Act, Section 11B-101, *et seq.* of the Real Property Article of the Code of Maryland, and it is located in Montgomery County, Maryland.

2. The Webbs purchased a single family home located at 24001 Santa Anita Court, Damascus, Maryland approximately 22 years ago (“Property”) (R. at 124, 127). The Property is located within the Association and is subject to the Association’s governing documents.

3. On or about February 21, 1986, a Declaration of Covenants, Conditions and Restrictions for the Association was recorded in the Montgomery County Circuit Court land records at Liber 7026, Folio 753, *et seq.* (“Declaration”). (R. at 56-95).

4. Article VI, Section 5 of the Declaration states, in pertinent part, “No trailer, camper, recreational vehicle, boat or similar equipment shall be permitted to remain upon any property within the Property, unless placed or maintained within an enclosed garage or carport or in an area, if any, designated by the Board of Directors for such purpose.” (R. at 67).

5. The Webbs freely admit that they have parked trailers on the pad adjacent to the garage during the 21 years that they have lived at the property. (R. at 127). At the hearing, Mr. Webb testified that their house is located off the main road, that they have parked a boat or trailed on the property since 1988 and that they have had no complaints from the neighbors.

6. The Board President, David Post, testified that in January 2010, the Board sent notices to all owners who were in violation of this provision of the Declaration, which numbered approximately 20 owners. He testified that he worked with the Commission’s staff in drafting the letter and that all of the owners had brought their properties into compliance, except for the Webbs.

7. Mr. Webb testified that he did not receive this letter, but his wife testified that she had received the notice.

CONCLUSION OF LAW

As a threshold matter, the panel finds that the Commission has jurisdiction to hear this dispute under Section 10B-8(4)(A)(i) of the Montgomery County Code.

The Webbs aver that they have been parking a trailer and/or pop up camper on their property for the last 22 years and the Association has taken no action to have them removed, essentially making an argument that the Association has waived the right to enforce this provision of the Declaration. While the Hearing Panel recognizes the Webbs' frustration that they were not previously notified by the Association that parking a trailer and/or pop up camper on their property was a violation of the Declaration, the actions, or lack of actions, by the Association do not rise to the level of equitable estoppel.

First, Article XI, Section 1 of the Declaration states, in pertinent part:

Enforcement. The Association, or any Owner, or any mortgagee of any Lot shall have the right to enforce, by any proceeding at law and/or in equity, all restrictions, conditions, covenants, reservations, easements, liens, charges or other obligations or terms now or hereafter imposed by the provisions of this Declaration, or the Articles of Incorporation or By-Laws of the Association. Failure by the Association or by any Owner or by any mortgagee of any Lot to enforce any covenant or restrictions herein contained or any provision of the By-Laws or Articles of Incorporation of the Association shall in no event be deemed a waiver of the right to do so thereafter. (Emphasis supplied.)

Accordingly, when the Webbs purchased the Property, they were on notice that if the Association did not enforce a particular provision of the Declaration, like the trailer prohibition, the Association had the right to enforce that provision at a later time.

Furthermore, mere delay in enforcement is not enough to support an argument for estoppel. "The doctrine of equitable estoppel involves not merely an unreasonable delay in seeking relief but a delay that causes prejudice to another." W. Hyatt,

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ASSOCIATION LAW at 167 (ALI-ABA 3d Ed. 2007). *See also, South Village Homes Corp. v. Toossi*, CCOC #50-10 (March 22, 2011) (holding that a 6-year delay in enforcing a parking rule did not prevent enforcement when the homeowner could not show prejudice resulting from the delay); *Greenfield Station Homeowners Association v. Mehta*, Commission No. 203 (June 10, 1993) (holding that a 2-year delay in notifying the homeowner of a violation did not bar the association's claim in the absence of any evidence showing the homeowner suffered any prejudice as a result of that delay).

Here, the Webbs began parking their vehicle in violation of the governing documents as soon as they moved into the Association. Accordingly, their conduct was not the result of any delay in enforcement - it preceded the delay. Rather than suffer any prejudice from the delay, the Webbs benefited from the delay and were able to park a trailer on the Property. Notably, there was no evidence or testimony presented by the Webbs that they had suffered any prejudice and in fact, there was some discussion at the hearing between the parties that placement of an inexpensive car port over the pad might allow the Webbs to continue to park a trailer on the Property.

ORDER

Within 30 days from the effective date of this Order, the Respondents must cease parking any vehicles on the Property which violate the Association's governing documents.

Commissioners Dubin and Farrar concur in this opinion.

Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order pursuant to the Maryland Rules of Procedure governing administrative appeals.

Ursula Koenig Burgess, Panel Chair
April 26, 2011